IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 5931 of 2007()

CRIME NO. 136/05 OF CHAVAKKADU POLICE STATION

PETITIONER/3RD ACCUSED

SANTHOSH P.CHACKO, S/O.P.M.CHACKO,
PALLITHAZHATH HOUSE, ANICADU WEST P.O.,
MAILADI KARA, KOTTAYAM TALUK.

BY ADV. SRI.R.REJI
SRI.B.BIPIN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTING ADDL.SUB INSPECTOR OF POLICE,
CHAVAKKADU POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 5931 of 2007

- -

Dated this the 9th day of October, 2007

O R D E R

The petitioner is the third accused in Crime No. 136 of 2005 of Chavakkad police station registered, inter alia, under Sections 420, 468 and 471 I.P.C. This crime was initially registered as Crime No.104 of 2005 of Gandhinagar police station. That crime, in turn, was registered when the accused in Crime No.103 of 2005 of Gandhinagar police station was questioned and his interrogation revealed the alleged offence involved in this case. That crime was later transferred to the Guruvayur police station on the assumption that the offence is committed within the jurisdiction of Guruvayur police. It was then realised that the offence was actually committed within the jurisdiction of Chavakkad police station. Accordingly the crime has been transferred to Chavakkad police station and re-registered as Crime No. 136 of 2005. Altogether there are two accused persons.

2. To put it in a nut shell, the allegation is that the first accused took a car from the owner/representative on a monthly rent.

The petitioner is a Pastor by profession. He, along with the co-accused, created false and fabricated documents in respect of such car taken on hire. Such documents and the car were pledged before a financier and a loan of Rs.1.5 lakhs was availed by the petitioner acting in collusion. The petitioner had played a crucial role in the creation of false documents and in pledging the vehicle with the forged documents before the financier. Investigation is in progress. The petitioner has already been arrayed as an accused. He apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is pointed out that the petitioner was earlier granted anticipatory bail. According to the counsel for the petitioner he has been granted anticipatory bail in this case itself. But on verification of all the relevant documents it is seen that Annex.A anticipatory bail was in relation to Crime 103 of 2005 of Gandhinagar police station. This crime is in relation to what was initially registered as Crime No.104 of 2005 of Gandhinagar police station. Annex.A order passed in Crime No.103 of 2005 cannot therefore protect the petitioner against arrest in the present crime.

4. The learned Prosecutor opposes the application. He submits that the available inputs clearly point to the complicity of the petitioner. According to the petitioner he had no contumacious responsibility in the alleged pledging of the vehicle and the documents before the financier.

5. In the nature of the disputes and contentions raised, the learned Prosecutor was requested to place the case diary before me after flagging the relevant pages. I have gone through the case diary. Having considered all the relevant inputs, I find merit in the opposition raised by the learned Prosecutor. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. The fact that the petitioner is a Pastor by profession or that he was granted anticipatory bail in the connected case are not reasons to invoke the extra ordinary equitable discretion in favour of the petitioner.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and

applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

tm